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**TOWN OF BETHLEHEM
BOARD OF APPEALS**

April 21, 2010

A regular meeting of the Board of Appeals, of the Town of Bethlehem, Albany County, New York, was held on the above date at the Town Offices, 445 Delaware Ave, Delmar New York

PRESENT: Daniel Coffey, Board of Appeals Chairman
Michael Moore, Board of Appeals Counsel
Keith Silliman, Planning Board Counsel
Lennie Micelli, Board of Appeals Member
David DeCancio, Board of Appeals Member
Matt Watson, Board of Appeals Member
Kenneth Umina, Board of Appeals Member
Mark Platel, Assistant Building Inspector
Justin Harbinger, Assistant Building Inspector
Rob Leslie, Senior Town Planner
Peter Lynch
Mike Tucker
Thomas Burke
Luke Mullen
Michael Kornstein
Matt Clyne
Ron LeVesque
Joe Konicek
Kim Konicek
Richard Robelotto
Jennifer Dougherty
James Loder
Thomas Butler

36 Chairman Coffey called the meeting to order at 7:00 pm noting that there is a quorum with all
37 members being present as well as Attorney's Mike Moore and Keith Silliman. The first order of
38 business is a Public Hearing for Richard Robelotto to install a 6' fence in the front yard at
39 property located at 19 McCormack Rd. Slingerlands. Mr. Platel would you give us the reason
40 for the hearing.

41
42 Yes Mr. Chairman. The applicant is proposing to install a 6 foot fence located in the front yard of
43 his property. In the front yard only a 4' fence is permitted. To paraphrase the zoning law, the
44 front yard is defined as the space between the main structure and the street line. The existing
45 main structure is occupied as a single family dwelling and is located in a core residential zoning
46 district.

47
48 The reading of the public hearing was indented into minutes on a motion by Mr. Umina and on a
49 second by Mr. Micelli.

50
51 Mr. Robelotto from 19 McCormack Rd gave the presentation for his variance stating that the
52 fence will be replacing the existing row of arborvitae that ran between his and his neighbor that
53 was damaged over the last few winters and can't be rehabilitated at this time. The fence will be
54 50' from the road and runs on a diagonal away from the house and will still be seen from the
55 road. The adjoining neighbor is in full support of the fence and actually offered to pay for part of
56 the fence. Chairman Coffey asked if the neighbor was Mary Kelly. Mr. Robelotto said yes and
57 went on further to say that basically the fence will help us maintain the privacy that we have had

58 for the 30 years that I have lived here and that it also blocks out the headlights that shine into my
59 bedroom from the road. The hedgerow has been there for many years and I have not able to
60 maintain it for several years with them getting older as well as myself getting older. Mr.
61 DeCancio asked for the definition of the front yard questioning whether the fence is really
62 located in the front yard or not and he was directed to the definition section of the code by
63 Attorney Moore and Mr. Platel. Mr. Micelli asked what material the fence would be made of in
64 which the applicant responded either cedar or vinyl. Chairman Coffey had asked if the plantings
65 could be replaced and the applicant responded that the plantings had been there for 30 years and
66 he would have to move them in a ways due to the root structure and to put in plantings that are
67 this size would be monetarily prohibitive. Chairman Coffey asked if you could install a 4' fence
68 and Mr. Robelotto stated that it would not give anywhere the privacy that he and his neighbor
69 have had for many years. Chairman Coffey asked if he was to install the fence if he was going
70 to remove the shrubs and Mr. Robelotto said that they would be removed. Chairman Coffey
71 stated that you can do a 4' fence in the front and he asked if a 4' fence would do and the answer
72 was no in Mr. Robelotto's opinion in order to keep the privacy that he and his neighbor have had
73 in the past with the shrubbery. Mr. Watson inquired as to the height of the existing shrubs and
74 Mr. Robelotto answered that they were at least 10 to 12 feet tall before they got knocked down
75 by the snow. Mr. Coffey asked if the neighbor had be noticed and he said that Mrs. Kelly had
76 been and was in favor and also responded that he is hoping to install vinyl fencing and would be
77 hiring a contractor to install the fence. The public hearing was closed at 7:10.

78
79 Noting that the next public hearing was at 7:15 the Chairman asked that the Board set the public
80 hearing for Peter Ebert. The Board then set the public hearing for May 5, 2010 at 7:00pm on
81 motion by Mr. Umina and a second by Matt Watson. The next issue was brought up by Mr.
82 Platel noting that the applicant from 6 Center Lane had not supplied any additional information
83 and that the Sign Company for Hoffman's Car Wash and Jiffy lube would be in tonight for more
84 direction and to give information.

85
86 The minutes of the April 7 2010 meeting were approved as changed on a motion from Mr.
87 DeCancio and on a second by Mr. Watson.

88
89 Chairman Coffey opened the Konicek Hearing for a rear yard setback violation at 47 John Street
90 in Selkirk. Mr. Platel stated that the foundation is setback 23.8 feet from the rear property line
91 which is 1.2 feet shy of the 25' required. This encroachment was picked up when the applicant
92 submitted the foundation location as required under the building permit. Mr. Konicek stated that
93 the encroachment of the structure into the rear yard setback was due to the fact that they had to
94 hire a new contractor after the original builder disappeared and took the house plans. They then
95 went back to the engineer that drew up the plans for them to get additional plans to give to the
96 new builder. The mistake happened when we got the plans from the engineer. He reprinted the
97 original plans that we had him draw up, which were previously determined to be too big for the
98 lot. The work had been started and we did not find out about the problem until our surveyor did
99 the foundation location and here we are today. Chairman Coffey asked how much work had
100 been done and Mr. Konicek said that they had stopped after the foundation was poured. After
101 finding out that it was in violation we went to the building department and foiled for the
102 variance and was told by Mr. Platel we could precede at our own risk. Chairman Coffey asked
103 how far along the project was and Mr. Konicek responded that we stopped at the time the
104 foundation was determined to be in violation but continued working after speaking to Mr. Platel.
105 We are now framed and sheathed and are ready to put on the roof. Chairman Coffey verified
106 that it is 1.2 feet off the back corner they were asking for. Mr. Umina and the applicant
107 determined which corner of the building was in violation. Chairman Coffey asked if there was
108 any objection that they knew of and Mr. Konicek stated that they called the Audubon Society
109 two times and have not heard back from them. That land, 68 acres was donated to the Audubon
110 Society by the applicant father. No one at the hearing stood up to speak in favor or in opposition
111 to the application. Mr. Watson asked if there was any other variance that would be needed due
112 to the fact that the plans were wrong and Mr. Platel stated that there were not. The chairman
113 closed the public hearing at 7:23.

114
115 Mr. DeCancio let the applicants of the 2 public hearings know that it would be some time before

116 they would get to possibly discuss the hearings and make a decision. The applicants said thanks
117 for the warning and left.

118
119 Chairman Coffey, Next up we have the Delmar Medical Arts and Walgreens I believe next on
120 our agenda and when we last we left off we were going to vote on the variance issue and counsel
121 asked for an uncoordinated review and a Neg Dec. and Attorney Moore was

122
123 Mr. DeCancio. Can we stop there Mr. Chairman.

124
125 Chairman Coffey, Yes

126
127 Mr. DeCancio, We just approved minutes that shows a vote.

128
129 Chairman Coffey, A vote, I do not believe so

130 Mr. DeCancio, Yes, go to March 7th.

131
132 Chairman Coffey, Do you have a line number.

133
134 Attorney Moore, Legally Dave the board

135
136 Dave DeCancio, It's not possible, correct

137
138 Attorney Moore, cannot take action pending SEQRA completion of the SEQRA...

139
140 Mr. DeCancio, Correct, that is why I want to bring attention line... pause, you said right here line
141 307 Mr. Platel I would like to.....

142
143 Mr. Platel, 300 is, do we have motion, and Mr. lynch said, Dan if I may would the Board
144 consider making a Negative Declaration before you vote.

145
146 Chairman Coffey, yeah Dave I do not think we voted.

147
148 Mr. DeCancio, line 363, Mr. Platel, you did not vote, you did not vote, ok sorry.

149
150 Chairman Coffey, I think the applicant preferred that we did not vote.

151
152 Mr. DeCancio. Correct, I misread that I thought it said here that we did vote on line 363.

153
154 Chairman Coffey, so there was no vote and a request that we do an uncoordinated review and
155 that there be a vote on SEQRA finding of no significant environmental impact and neg dec. We
156 asked Attorney Moore to come back to discuss and give us his legal opinion on that topic. If
157 you could?

158
159 Attorney Moore, Yes Sir. Since I have returned we discussed this internally. I have discussed it
160 with the counsel for the planning board, the chairman of the planning board as to what we all
161 sort of collectively feel would be the appropriate course of action. For the record and the
162 application to the board in public session there are really, let me back up further. As I stated
163 earlier most of the matters that come before this board especially since the 2005 Amendment of
164 the Zoning Code which transferred jurisdiction of special use permits from this board to the
165 planning board. Matters that come before the board many of them are categorically excluded
166 from SEQRA compliance, not all of them but many of them. So I say generally we do not deal
167 with that, we deal with use variances and other area variance applications. This application that
168 is before us tonight for the Burke project is not one of those. The number and type of variances
169 are such that it is not categorically excluded and before this board and any other public agency
170 that may have to rule upon this project within the areas of their jurisdiction. The Town Planning
171 Board and any other they must comply with the New York State Environmental Quality Review
172 Act before they render a final decision. The initial determination that has to be made in respect
173 to this project is in a case like this is when there more than one agency involved in the review

174 and approval of the project is to determine which of those agencies shall act as the SEQRA Lead
175 Agency. The lead agency's principal duties are to render what we call the determination of
176 environmental significance. That is whether through the judgment and discretion of the lead
177 agency the project may or may not have significant impact on the environment that require
178 further consideration or study ion an environmental impact statement or conversely the lead
179 agency believes there are no such impacts likely to arise and the lead agency will issue what we
180 call a negative declaration and no further SEQRA compliance is required. But we are getting a
181 little ahead of what we have to do tonight. The question that was presented by the determination
182 at hand is which of the at least 2 agencies that we are aware are involved in the review and
183 determination of this project that being this board and the planning board , which should serve as
184 the lead agency. If we are to conduct what the law calls a coordinated review of SEQRA issues
185 there are basically 2 option when more than one agency is involved we can conduct an
186 uncoordinated review under which this board as the first agency to whom the application has
187 been presented would conduct its own SEQRA review without regard to any of the other
188 potential involved agencies. That is a legally permissible action any determination that this
189 board would render on SERQRA would not be binding on any other agencies who may yet come
190 to review this action because of the uncoordinated review and the board would then proceed to
191 consider based on the materials that have been presented provided by the applicant whether this
192 project, not just the variance but the project as a whole, the demolition of the buildings,
193 construction of the new building, the landscaping, the new parking, etcetera, everything, the
194 entire project not just the variances. Whether that project in your judgment may or may not have
195 an impact on the environment would require further study. You can do that; you can conduct an
196 uncoordinated review. It is my understanding, I was not here last week but I have talked briefly
197 with the applicant's counsel and that is the course of action that the applicant prefers. A second
198 option is what we call a coordinated review in which basically, literally the agencies involved
199 coordinate their review processes with one of those agencies acting as the lead agency. If the
200 board elects to conduct a coordinated review this evening the first step in the process would be
201 as I proposed to the board, I believe you have all seen the letter that I have drafted for your
202 consideration. A letter would go a resolution would be adopted by the Board this Board tonight
203 authorizing me, your counsel to send a letter to the Chairman of the Town Planning Board
204 proposing A, that in view of the multiple agencies involved that there be a coordinated review
205 and recommending the town Planning Board as the agency that apparently has broader review
206 jurisdiction and broader authority over the project as a whole should act as the SEQRA lead
207 agency. The planning board if that letter goes forth the planning board would put that matter on
208 its agenda and take that up at its first available opportunity whenever that may be. I can't speak
209 for the planning board for what they will do but I would think it likely that the planning board
210 would accept lead agency status. What that means in terms of this project is that in a
211 coordinated review the ZBA as only an involved agency would then be precluded from taking
212 further action on this project until the Planning Board has rendered its determination of
213 environmental significance under SEQRA. We do not have to wait until the planning board
214 makes its final determination on the site plan and whatever matters may come before the
215 planning board but we do have to wait until the planning board makes its determination under
216 SEQRA because unlike a coordinated review, I 'm sorry, uncoordinated review in a coordinated
217 review the lead agencies determination under SEQRA is in fact binding upon all other involved
218 agencies. So the options are and I know I am giving you a crash course.....

219
220 Mr. DeCancio, could you repeat that last line again please, what you just said.

221
222 Attorney Moore, in a coordinated review.

223
224 Mr. DeCancio, coordinated review, ok.

225
226 Attorney Moore, in a coordinated review process the lead agency....

227
228 Mr. DeCancio, all right, got you. I wanted to make sure of that.

229
230 Attorney Moore, SEQRA determination is binding upon all other agencies... In discussion that
231 have been held in the last week or so and the counsel of the planning board the chairman and

232 others it has been our considered opinion and recommendation that given the size of the project
233 that location where it is, on a busy corner in the Delaware Ave corridor that we believe it
234 appropriate for the two town agencies involved to proceed in a coordinated review. It is your
235 decision gentlemen as I say and I will make it clear if it wasn't before, either a coordinated or
236 uncoordinated review is a legally permissible way to go. The recommendation that I am making
237 is that we conduct a coordinated review, allow the planning board to determine whether it
238 wishes to accept lead agency status, and then a wait the planning board determination under
239 SEQRA, and I would further recommend that consistent with that coordinated approach to
240 project review. At the appropriate time when the planning board has made its decision under
241 SEQRA, that any approvals that this board wishes to render on the variances the variance
242 application that has been presented be made contingent upon project approval by the planning
243 board. I believe that planning board will take the same approach and that any approvals that the
244 planning board renders in its site plan review will be similarly contingent on consistent
245 approvals by this board so that, that way each board is protected if you will from the other
246 inadvertently or unintentionally making decisions which conflicts with the others. And that
247 would be the substantive review of the project would in that manner proceed in I guess in a lack
248 of a better word a coordinated fashion as well.

249
250 Mr. Watson. Now if there is a coordinated review there would be a third day hearing on the
251 coordinated review, is that right?

252
253 Attorney Moore, no, the play in my understanding, no there is no mandated, let me get my
254 regulations. The planning board, we would send a letter or something like that to the planning
255 board, the planning board would then take it up at their first available opportunity. I do not set
256 the board's agenda nor do we and I do not know what their schedule is like but they would take
257 it up at their first available opportunity but there is no

258
259 Mr. Watson, I was reviewing SEQRA on the DEC website.

260
261 Attorney Moore, yes they must make a determination in

262
263 Mr. Watson, 30 Days.

264
265 Mr. DeCancio, 30 Days.

266
267 Mr. Moore, lead agency must be agreed upon within 30 days of the date of submission would be
268 sent to the planning board. So if we sent it tomorrow they would be required to decide the lead
269 agency issue within 30 days. It is not mandated that they wait 30 but again I do not control the
270 planning board's agenda nor do we.

271
272 Chairman Coffey, now we have to grant a determination...

273
274 Attorney Moore, and then, I am sorry Dan. The lead agency once established must then
275 determine the environmental significance of the action in 20 days after acceptance.

276
277 Chairman Coffey, now having closed the public hearing we have 62 days from close of public
278 hearing to render our determination and that clock is still running notwithstanding?

279
280 Attorney Moore, that clock is still running however if we initiated the lead agency coordination
281 process again the zoning board as an involved agency would be legally precluded from
282 rendering any decision until the lead agency was decided upon and once decided the lead agency
283 renders its determination of environmental significance there are 2 other, well, the 62 days is
284 running right now, the 62 days is running.

285
286 Chairman Coffey, all right, I want to hear from the applicant in a second but if I can just briefly
287 summarize my understanding is that the board has, that this is an unlisted action, no question and
288 the board can do either a coordinated review or can do uncoordinated review in its discretion.

289

290 Attorney Moore, either course is legally permissible.
291
292 Mr. DeCancio, can I add one thing to that? Clarity to the board. Should we initiate an
293 uncoordinated review each board would do their own assessment.
294 Attorney Moore, correct.
295
296 Mr. DeCancio and the planning board would do their own...
297
298 Attorney Moore, correct.
299
300 Mr. DeCancio, we would not prohibit them from doing anything of requesting a EIS
301
302 Attorney Moore, this determination would not be binding upon the planning board.
303
304 Mr. DeCancio, Correct.
305
306 Attorney Moore, Correct.
307
308 Mr. Umina, Why would we want a coordinated review if ours is not binding?
309
310 Attorney Moore, Simple to facilitate communication and coordination between the 2 boards on a
311 project of this size and perhaps importance to the corner.
312
313 Mr. Umina, And I have another question. How quick could they take this up?
314
315 Attorney Moore, I could not answer this. That would be up to the board just as this board sets its
316 own agenda that would be up to the planning board.
317
318 Mr. Umina, They would not take first the SEQRA and take a look at that right away.
319
320 Attorney Moore, That is up to the board. That would be up to the planning board although
321 planning board counsel is here so if he wants to weigh in.
322
323 Attorney Silliman, first thing we would do before we proceed any further.....
324
325 Attorney Moore, for the record this is Keith Silliman the planning board counsel.
326
327 Attorney Silliman, sorry, we would take a look at SEQRA and make the SEQRA determination
328 first thing.
329
330 Mr. Umina, so that would be the first thing on your agenda?
331
332 Attorney Silliman, Yeah we would have to make a pos dec or neg dec before we can get into the
333 site plan or the special use permit.
334
335 Mr. Umina, so I'd like another clarification, if we were to vote for a coordinated review how
336 soon would your SEQRA , would you be able to speculate as how soon the SEQRA would be
337 determined?
338
339 Attorney Silliman, it would be speculation. It depends on the quality of the information coming
340 in from the applicant.
341
342 Mr. Umina, so you would not know?
343
344 Attorney Silliman No, but these projects move pretty quickly working with the staff through our
345 process.
346
347 Attorney Moore, The question has been put to me earlier in these deliberations as to whether this

348 SEQRA review process could have been initiated at the outset of our review the answer to that is
349 yes. And if there are those who are concerned that this was a failing on someone's part I will
350 take the blame for that but yes the process could have been initiated buy this board when the
351 application was first presented to you, it was not.
352

353 Chairman Coffey, Any other questions for counsel? I just, I want to give everyone a chance to
354 talk but do you have any questions for counsel. Otherwise I want to hear from the applicant
355

356 Mr. Watson, I am having a hard time grasping why the significance of coordinated is when, this
357 is probably more for comment but in an uncoordinated review the planning board could take this
358 up, review the environmental impacts and they will take the appropriate actions and make them
359 address the concerns appropriately right?
360

361 Attorney Moore, Yes.
362

363 Chairman Coffey, Mr. Lynch, do you have some comments? And just for the record I did get an
364 email from you April 20, 2010 for the record but feel free to expand on your comments.
365

366 Mr. Lynch, I did want to pass out an email to Mike Moore and to Dan and would have sent it to
367 everyone but I did not have your emails.
368

369 Mr. DeCancio, can you read it to us?
370

371 Mr. Lynch, yes I would love to read it.
372

373 Attorney Moore, I think it was forwarded Peter.
374

375 Mr. Lynch, let me just say this, after the last meeting as you know I did at the last meeting ask
376 you not to vote because as Michael indicated this is an action that does require a SEQRA
377 determination before you vote so we wanted to make sure that if you vote for a project and of
378 course you all discuss your views we wanted to make sure that it would stick and be in
379 compliance with the environmental law. In my email to Michael I point out one fundamental
380 point, first of all it is without question an unlisted action and as Michael indicated it is absolutely
381 permissible for a zoning board in an unlisted action to conduct its own SEQRA review, it is
382 called an uncoordinated review and the planning board can conduct its own review. The SEQRA
383 regulation that I sited which is 617.6 B 4 I, in my email, basically says that to a board that is
384 conducting an uncoordinated review is that if you find that this project has a significant adverse
385 environmental impact, one that will likely in other words require the preparation of an
386 environmental impact statement then you have to stop the uncoordinated review and engage in a
387 coordinated review with the planning board, select which board is going to become the lead
388 agency and conduct the coordinated review. As I pointed out in my memo to Dan and Mike and
389 I do not think you all have it.....
390

391 Mr. Chairman, I think they have it.
392

393 Mr. DeCancio, Yeah.
394

395 Mr. Lynch, But the point of the matter is this, is we probably belabored the point in the meeting
396 but we have this assembled parcel with the two existing buildings on it already and the use is
397 essentially the same use, office / pharmacy, consolidating the two building into one, and granted
398 increasing the green space to 21% and so on as laid out in my memo. I think it is fundamentally
399 clear that this board is well in its discretion to do two fundamental things under SQRA. One, to
400 declare an uncoordinated review that you are going to do your own environmental review of the
401 project as life will find it is a project. And two to issue a negative declaration of environmental
402 significance which is essentially a finding that this particular redevelopment of this existing site
403 will not cause an adverse environmental impact which would otherwise necessitate a full blow
404 EIS process. If you do that if you engage in the uncoordinated review, issue the negative
405 declaration and then vote to grant the variances we have requested and fully discussed at the last

406 meeting, then when this project then goes forward to the planning board it goes as a project that
407 has definition, it goes as a project that all of these bulk requirements as far as the dimensional
408 requirements and the parking spaces it goes to the planning board as a project. And when the
409 planning board gets the project it then reviews the project as if the variances were in place as a
410 principally permitted use. In other words, if you grant the variances when we go before the
411 planning board the issue of the number of spots or the variances that we have asked you for has
412 already been determined by this board which of course is in your jurisdiction. If we conversely
413 go to, and by the way if you grant the variances for the project you do not need to make those
414 variances conditioned, simple because we cannot build the project without site plan anyway. So
415 the fact of the matter is your variance determination should be a determination if you are willing
416 to grant the variances as indicated 2 weeks ago, it should be a determination to the planning
417 board that you are sending this project to them for site plan review with your determination that
418 the variances requested are appropriate. Now conversely the reason why I spoke to Michael
419 about this a week after the meeting and sent him the memo about why we want an uncoordinated
420 review the reason is very simple. Number one is if you send this project now, if you send this to
421 the planning board for a coordinated review you are going beyond what SEQRA requires.
422 Because SEQRA is saying, hey guys if you're a zoning board and you have an unlisted action
423 that clearly does not have an adverse environmental impact, it is the reuse of an existing site for
424 the same use then you are going beyond what the SEQRA regulations are directing you to do.
425 Secondly, if you send this application to the planning board without the variances in place, well
426 then the planning board will not have the benefit of knowing ultimately when they are reviewing
427 the project, well how do we review the site plan for this project because if our view of this
428 project of the project without the variances we might have one view of it but if we are reviewing
429 the project with the variances already determined we now have a defined project.

430
431 Chairman Coffey, I thought the site plan was not going to come up, that the first step was going
432 to be the SEQRA and then it comes back to us for the variance. So I do not think they are going
433 to get into the site plan.

434
435 Attorney Moore, I think that is right.

436
437 Mr. Lynch, well let me Dan, I, I can see that analogy but the truth of the matter is in the real
438 world of economic pressures of development we do not have the luxury of that kind of a time
439 line. But the fact is the planning board would be well within its discretion to conduct its review.
440 Say you did a coordinated review, in other words say you send a letter to the planning board and
441 between the two boards you guys agree the planning board would be lead agency. Ok lead
442 agency, the planning board could take that project do its review and it could actually issue the
443 negative declaration the same night it decides to grant the site plan approval. It does not have to
444 grant the SEQRA determination first, it can do it at the same time. Our position is this, this is an
445 entirely unnecessary move on the part of the board. You don't have to do what, with respect to
446 counsel what he is recommending you to do. If you give the project some definition you are not
447 prejudicing the planning board from reviewing its site plan because let's face it whether you give
448 the variances to us or not it is not a function of the planning board. And effectively I find it
449 extraordinary that counsel is recommending to the board that you essentially advocate your
450 SEQRA review of this project based on a meeting between the planning board chair and
451 planning board counsel. Because frankly what happens is that you guys would basically be
452 passing the matter along and the truth of the matter is as the applicant, we really needs to have a
453 determination on the project and I know that as I said in my email to Dan and Mike, we were
454 really gratified two weeks ago when you guys were indicating you know what, you're going to
455 grant this variance so delay on a technicality that is completely unnecessary especially when the
456 technicality is that the recommendation of counsel is something that SEQRA does not require us
457 to do. And in fact SEQRA allows you to do what we have asked you to do. Now I have drawn
458 up a proposed negative declaration which simply outlines some of the factors here which we
459 thought were fairly straight forward about the demolition the two existing buildings, replacing it.
460 Mr. DeCancio I took some notes when he was reciting some of his reasons, the second criteria
461 for example was creating a sense of place. We talked about the closure of the access drives
462 along Delaware Avenue to further pedestrian safety and frankly in going through it you may
463 recall we added those 4 foot wide isles in the parking lot so instead of having this a wide open

464 parking lot where people can drive anywhere they want by putting those n people really have to
465 stay within the drive lanes because pedestrian safety on site was an issue so we laid out those
466 factors. I cannot overemphasize how important it is for the project to continue to get some
467 direction from you guys and we are asking you to please consider our request that you actually
468 exercise your discretion to make the SEQRA determination tonight and to vote on the variances.
469 We cannot really survive in the process if you will, a delay on the vote of the variance simply
470 because we have potential tenants that we have to report to and if we go back and do not have
471 the variance we basically have nothing. And if we get further delayed in the process through the
472 SEQRA process with the planning board we have got nothing. Granted if you grant the
473 variances tonight that does not mean that the planning board cannot conduct its own
474 environmental review, we would welcome them to conduct their own environmental review and
475 they are certainly not bound by your SEQRA determination so you would not be undermining
476 the planning board's environmental review in any shape or form. Nor would you be
477 undermining their site plan review, they still have the right to conduct their site plan review. But
478 you would be sending the project to the board with definition that these variances are in place
479 now go ahead and review the site plan. So with all due respect of the recommendation from
480 counsel I would ask this board to consider the application that we are proposing the issuance of
481 the negative declaration and the vote on the variance. And I would certainly be happy to
482 entertain any questions if there are any.

483
484 Chairman Coffey, I understand and appreciate your concern about the timing and I certainly
485 understand that time is money and you know we certainly would work with you. I guess that it's
486 my understanding is there any application pending with the planning board?
487

488 Mr. Lynch, No we had what happened Dan is we had done a meeting with the development team
489 quite a while ago actually. I believe it may have been December, November and what happened
490 at that meeting when we were getting comments from all the department heads what rally
491 became clear is that hey guys you need this variance and that variances and you know there was
492 really confusing to go back to the planning board with a site plan application without the issue of
493 the variances being put to bed one way or the other. Not to mention that fact that there may be
494 some additional studies that the planning board would be looking for such as storm water and
495 the light that cost significant amounts of money. We decided as part of the process that, say hey
496 look it lets not put the cart before the horse. Let's go to the zoning board first and make our
497 case, we believe we have a legitimate case for the variances and I believe after the discussion
498 two weeks ago of this board you also believe that we have a good case for the variances. And
499 you know once we have that solid base to go forward we can go forward to the planning board
500 with direction and that is why we did not submit the site plan application to the planning board
501 because Dan the fact is if you guys denied the variance there would not be a site plan.
502

503 Chairman Coffey, you would not need site plan.
504

505 Mr. Lynch, Yes and so basically I am asking you and encouraging you to look at it. You know
506 you can do it, you are well in your discretion to do it under the environmental law and Mike
507 even acknowledged that. You all indicated that you were going to vote in favor of the variance,
508 this is a good project it is a good project for the site. I do not want to go back and belabor all the
509 points of about the bighted site but this is a good project, it is a real project and it will happen if
510 we have the help and assistance of the boards. And it is not that I am asking you to grant a
511 variance that would be inappropriate and I am certainly not asking you to do anything that would
512 be contrary to SEQRA. Frankly you all know I am the one that asked you not to please not vote
513 on it because we do want to comply with SEQRA. That's my case guys.
514

515 Chairman Coffey, Any other questions for the applicant? Ok. Anyone else here to speak on this
516 issue? If there are no further comments I would like to hear from each of the board members
517 and we will decide on how to handle it. I would like to provide my comments first. I agree with
518 the applicant that this is a worthwhile project. I agree the area is blighted and needs development
519 and I agree that we should work as quickly as we can. If we are going to go forward, and the
520 applicant is correct that we indicated at the last meeting that we are going to grant the variances,
521 then we certainly want to make that happen. We understand that time is money, we understand

522 that every day that goes by that area is blighted and it remains an eyesore to the town. That
523 having been said I do take the advice of counsel with respect on how SEQRA should be handled
524 in this matter. Just incidentally some of us had gone to some training to Hudson Valley
525 Community College a couple of weeks ago and one of the speakers in my recollection
526 specifically said that if when you have an issue that is before both zoning and planning the, you
527 do not have to but the preferred method would be would have the zoning defer to the planning
528 board ask them to be lead agency simply because the planning board has more experience. I can
529 speak to that having served on the planning board that they have more experience in dealing
530 with SEQRA issues. I will note that later our next item on the agenda deals with the cell towers
531 and there has been recommendation by other counsel that that also be handled with a
532 recommendation from the zoning board to the planning board for a coordinated review with the
533 request that the planning board take the lead on it. Another thing I talked about with Counsel
534 Moore, we could talk about more further is perhaps in the future is we could have some kind of
535 memo of understanding with the planning board to deal with these kind of issues in the future.
536 But I do as much as to the use of the property will be the same as in the past I do believe that this
537 is a significant project given the 7 variances requested and given the size of the structure that is
538 going to be put in there. I know for example that Mr. Lynch has submitted a proposed
539 resolution. He is asking for example for this board to find that the site access for vehicular
540 traffic will be improved due to the closure of all access points along Delaware Avenue and the
541 relocation of the driveway access along Elsmere Avenue further away from the intersection of
542 Delaware Avenue. With all due respect I do not know that this board is capable of making that
543 conclusion. Also further down Mr. Lynch has asked this board to make a conclusion that the
544 redevelopment of the existing commercial site will not have a significant adverse impact on air
545 quality. The applicant is asking this board to find that a redevelopment of this existing
546 commercial site will not have a significant adverse impact on noise. I, the material we have in
547 front of us deals with parking it doesn't deal with these other issues. I don't know whether this
548 has a significant impact on these issues, I am saying that I do not feel we do not have a record in
549 front of us fully developed so that we can intelligently decide the issues that the applicant is
550 asking for us to decide tonight.

551
552 Mr. DeCancio, Point of order on that Mr. Chairman.

553
554 Chairman Coffey, Sure.

555
556 Mr. DeCancio, this board does not have the authority or the purview to address parking so I do
557 not feel that should factor into our decision personally.

558
559 Attorney Moore, well the two parking, or however many parking variances.

560
561 Mr. DeCancio, parking variances, but I feel that....

562
563 Chairman Coffey, you know I would amend my comment I was refereeing to the relief requested
564 pertained to primarily with respect to parking.

565
566 Mr. DeCancio, Also regarding traffic flow too. That is not under our purview.

567
568 Mr. Watson, Yeah I do not think we ever made a determination about air or based on air or
569 traffic.

570
571 Chairman Coffey, but if you adopt this, if you pass Mr. Lynch's resolution you have made a
572 determination as I read it.

573
574 Attorney Moore, let me in fairness to everybody here, in form the proposed negative declaration
575 that Mr. Lynch has presented to the board is fine, and whatever agency or agencies make a
576 determination under SEQRA on this project they will adopt something like this with recitations
577 like this and the statement of supporting reason that appear on pages two and three whatever
578 their content. I would agree with the Chairman if I was asked some of these I think are probably
579 inappropriate but the form of a negative declaration if this board adopts it or if you refer to the

580 planning board would look like this. I did not prepare another proposed SEQRA negative
581 declaration or resolution only because I was not asked to and if asked I can certainly do that for
582 the next meeting.

583
584 Chairman Coffey, Fair enough. My concerns again was I am not saying the form was incorrect I
585 understand that the language is consistent. My feeling in the training and research I have done is
586 that the planning board and having served on it is better suited to deal with SEQRA issues better.
587 I hope that we can get a determination get this back and get the applicant on the way. We have
588 indicated that we are going to grant the variances, we are on record as saying that so I do not
589 think that when the planning board gets this they are not going to be aware that the variances are
590 going to be granted because they are already on record. So I do not see this as advocating our
591 responsibility but just exercising our discretion under the law to have one coordinated SEQRA
592 review rather than do it piecemeal. And that is my opinion.

593
594 Mr. Watson, I would actually like to comment. I was actually at that Hudson Valley training
595 also and if you recall I pressed them asked them what was the preferred method was to handle
596 these things and they did not have a preferred method in my view. They quickly backed away
597 from any statement that I thought I heard seeking guidance for actually this case and future
598 cases. So, I do not think there is a preferred method out there and this is something I have
599 actively been pursuing over the last week or so. And in this particular case I do not think there
600 is a detrimental effect for us to do an uncoordinated review. I am actually going to suggest that
601 we do a negative declaration, uncoordinated review. My environmental concern is there is not
602 enough green space. But what is going to be there is actually more than what is currently there
603 between the two properties and is less a nonconforming issue if we did nothing. I also believe
604 that the planning board is better suited to do a SEQRA review of this than we are, in my view.

605
606 Mr. DeCancio, I would just like to add, I disagree with part of the Applicants statement that we
607 would be passing the buck should we go the coordinated review way, because there will be a
608 review. That is an option we have under the law under the statute to go that route so we are not
609 advocating our responsibility. At the same time I disagree with the Chairman also saying that
610 you know, comparing this project to the cell tower project that there is a major impact on this
611 area here. I agree with Board Member Watson that I feel the planning board is better to handle
612 SEQRA; they handle it on a day to day basis. The fact is in my opinion this project, I keep
613 hearing the terms from the Counsel and the Chairman is it the size and scope of this project. I
614 know correct me if I am wrong but what is big about it, the square footage of the building I
615 mean we voted last year on united health apartments which dwarfed this project. I feel like at the
616 end of the day should we go the route of an uncoordinated review and at this point leave it with
617 the planning board. We are not hindering their ability to do SEQRA; they do SEQRA like I said
618 on a daily basis which I feel is a much better approach right now. Given the, where we are in the
619 process of this project and everything to move this project forward. And I vote to go the
620 uncoordinated route with a Negative Declaration prepared by our Counsel, prepared the way we
621 want it written.

622
623 Mr. Watson, in all due respect to Mr. Lynch I would prefer our Counsel to do...

624
625 Mr. Lynch, I merely sent it as a proposal.

626
627 Chairman Coffey, Kenny, Lennie, comments?

628
629 Mr. Micelli, I kind of agree with my colleagues I mean we went through this several times. I
630 mean the issue with the traffic is a DOT problem. And I think the project is, it's a wonderful site
631 I think it is going to look great on the corner and we have researched it. You know we all voted
632 for it and without the declaration we would have moved forward to the planning. I think they
633 are more suited for SEQRA than we are and I am going to agree with my colleagues and I would
634 like to see the project get going and clean that corner up.

635
636 Attorney Moore, Just again and forgive me if I am restating the obvious the comments that the
637 planning board is more suited to do SEQRA. You guys would be doing a SEQRA

638 determination.
639
640 Mr. DeCancio, correct.
641
642 Mr. Micelli, right.
643
644 Attorney Moore, it just wouldn't be binding ok.
645
646 Mr. Micelli, Exactly
647
648 Mr. DeCancio, Sorry, I should have.
649
650 Attorney Moore, It's alright, I just wanted to make sure you knew what you were voting on.
651
652 Chairman Coffey, Board Member Umina, any comments?
653
654 Mr. Umina, well this is a real difficult decision here. I think my vote is going to be with the
655 majority in terms of doing the uncoordinated review.
656
657 Chairman Coffey, All right, so at this point.
658
659 Attorney Moore, We need a motion. And again my suggestion gentlemen for you is to make 2
660 motions. You need to deal with the SEQRA first to elect to conduct an uncoordinated review
661 under SEQRA to issue a... No you can't do that. You can direct me to prepare for your
662 consideration at the next meeting an appropriate negative declaration and resolution as well as a
663 resolution approving the variances requested by the applicant. That is really all we can do unless
664 you want to adopt Mr. Lynch's.
665
666 Mr. Watson, I would make that motion.
667
668 Chairman Coffey, so we have to push this off to the next meeting anyway.
669
670 Attorney Moore, the next meeting but...
671
672 Mr. DeCancio, no we are approving right now...
673
674 Attorney Moore, You are directing me to prepare the necessary documents for a SEQRA
675 negative declaration and an uncoordinated review and approval of the variances all of which I
676 will prepare in writing which will then be in front of you at the May whatever meeting.
677
678 Chairman Coffey, Mr. Watson we had a motion.
679
680 Mr. DeCancio, Second.
681
682 Chairman Coffey, second by Mr. DeCancio for the Counsel to state an uncoordinated review.
683 That is motion number 1, number 2 is a neg dec or no?
684
685 Attorney Moore, to prepare a resolution supporting an uncoordinated SEQRA review, the
686 issuance of a negative declaration for the project and variances under SEQRA and a resolution
687 approving the variances themselves.
688
689 Chairman Coffey, Do you want this all on one motion?
690
691 Attorney Moore, Yes, I mean they are separate documents and I will prepare separate documents
692 which I will get to you before the next meeting but it is...
693
694 Chairman Coffey, the motion as stated by counsel for the three things, uncoordinated review, the
695 negative declaration and also the granting of the variances for the applicant. Mr. Watsons

696 motion.
697
698 Mr. DeCancio, so you have to do SEQRA first?
699
700 Attorney Moore, You do and when we get back in May you will take up the SEQRA document
701 first and then you will vote to approve the variance.
702
703 Chairman Coffey, so we are not approving the variances?
704
705 Attorney Moore, well you are directing me to
706
707 Chairman Coffey, Directing you to...
708
709 Attorney Moore, Well yeah you are voting to approve the variances...
710
711 Mr. DeCancio, It is two separate votes I believe, first on the SEQRA and then another motion
712 for the variance.
713
714 Chairman Coffey, so the first motion by Mr. Watson is for an uncoordinated review and a
715 finding of negative declaration and a second by Mr. DeCancio. All in favor? (Watson, Umina,
716 Micelli & DeCancio voted in favor) opposed, I am opposed. The motion carries four to one.
717 Now do we have a motion to approve the variances?
718
719 Mr. DeCancio, So moved.
720
721 Mr. Umina, well do we do that next week?
722
723 Attorney Moore, now you probably want it, you want to do it tonight. I mean again, I'll
724 apologize, I was not here at the last meeting and I do not know the...
725
726 Mr. DeCancio, we should probably go on record then.
727
728 Attorney Moore, Did you have the discussion that you wanted?
729
730 Mr. Umina, Yes we did.
731
732 Attorney Moore, did you want to have further discussion?
733
734 Chairman Coffey, There was one issue. We did have the one issue, we had a discussion on the
735 public hearing that carried over into two meetings and I think the one question that was
736 remaining was to whether the relief requested was the minimum amount. Wasn't that issue
737 discussed?
738
739 Mr. DeCancio, I don't remember.
740
741 Chairman Coffey, Well I think we closed the hearing and had the discussion last meeting so I
742 think we are ready to vote on that. Do we have a motion to approve the variances?
743
744 Me DeCancio, So moved.
745
746 Chairman Coffey, motion by Mr. Decancio, second.
747
748 Mr. Watson, Second.
749
750 Chairman Coffey, Mr. Watson Second. All in favor.
751
752 Entire Board, Aye.
753

754 Chairman Coffey, Opposed? Vote carries 5-0. Thank you. The next meeting you will prepare
755 the paperwork Counsel and we'll have it.

756
757 Attorney Moore, Right, Again, I think we talked about this before but per the Town Zoning
758 Code, every determination of the board you have rendered a determination tonight must be in the
759 form of a resolution and I will bring those resolutions back to you in the May meeting.

760
761 All right and with that we are going to excuse you and call Attorney Silliman to the table.
762

763 -----
764
765 Chairman Coffey, Next on the agenda ESCO Tower presentation by Senior Town Planner Mr.
766 Leslie regards to procedure for variance from Article VI, Section 128-61 F and discussion on an
767 action on timeliness and SEQRA issues and we ask for Mr. Silliman to sit in as counsel on the
768 ESCO matter. Mr. Leslie we received and I believe circulated around a chronology that you had
769 done. If you could just in a couple minutes kind of briefly tell us where we are at with the
770 application as it relates to the items that we are going to talk about.

771
772 Mr. Leslie, Yes the latest submittal that was sent to the zoning board was copies of the radio
773 frequency propagations that were developed for Verizon Wireless and AT&T these maps show
774 the need for the cell tower and that is where we are at with that project now. The history that I
775 have provided dates back to February 2008 and shows the Applicants and Town's continuous
776 back and forth of information as far as letters, request for information, the applicant responses to
777 that information, the changing of that application from a 175' tower to a 120' tower which is
778 what the RF propagation maps show currently. So the intent of the history was to show that the
779 communication between the Town Department of Economic Development and Planning some
780 information from the zoning board and the application has been going on extensively for about a
781 year and a half. This was to address an issue that came up at the June 2009 meeting whether the
782 applicant had responded to a letter from the building department indication that they needed to
783 apply for an area variance or revise their application.

784
785 Chairman Coffey, There was a permit initially official according to the chronology filed on
786 February 27, 08, is that right?

787
788 Mr. Leslie, Correct

789
790 Chairman Coffey, And then May 29, 2008 the building department granted a 60 day extension.
791 Is that fair?

792
793 Mr. Leslie, Right before that March, 08 the building department indicated that the application
794 needs variances for height and side yard setbacks and they had 60 days to either file an
795 application to the board of appeals or revise the permit application. And within that time frame
796 of the extension the applicant was working with the Town Planning Department to get in a
797 complete application. We have a telecommunications code in our zoning law that list
798 information that is needed to have a complete application. And they were working in that in
799 order to file an application with the Zoning Board.

800
801 So they were working with staff since May of 2008 but as far as we know there has been any
802 formal request for extension beyond the 60 days that was requested may 29 2008 that would
803 have lapsed in July of 08. With the one 60 day extension that was granted by the building
804 department and there was nothing further. Do we have somebody here from the applicant? Yes
805 Mam.

806
807 Ms. Dougherty, My name is Jennifer Dougherty and I'm the Attorney here on behalf of the
808 ESCO tower

809
810 Chairman Coffey, Ok and I got your submission date April 8 2010 and if you could, would you
811 address the timeliness issue which is the issue. Normally the whole application needs to be in

812 within 60 days. I understand that you have your argument here but basically it is a two prong
813 argument.

814
815 Ms Dougherty, It's a two prong argument where we had the extension that was granted and
816 through continued communication between town officials and ZBA representatives there was a
817 continued process that left this application open and continuing and being submitted. There was
818 a two year process to get here today so we believe with that we ask that the board aqueous to
819 that extension. Also pursuant to Town Law 274 A we do not believe that there is a requirement
820 for area variance to make the appeal to the Building inspector prior to seeking an application
821 before the ZBA. We believe that pursuant to that law as it starts and the direct quote is "no
822 appeal from the Building Inspector is required for an area variance". So even though we applied
823 to the building inspector and got a decision, an appeal can be made directly to the Board of
824 Appeals for an area variance without the necessity of a decision or a determination by the
825 Administrative Official charged with the enforcement of the zoning regulations. So we believe
826 that we can be here as of right, notwithstanding that procedure.

827
828 Chairman Coffey, the question that I had on section 274 A is I understand that this board has
829 what I would call original jurisdiction of some matters that do not have to go to the Building
830 Inspector first to get to us. But in this case you did go to the building department first does that
831 change the equation at all. Do you have any authority for when somebody actually goes and
832 gets the denial if the 60 day clock doesn't apply in that case?

833
834 Ms. Dougherty, I don't need any authority in that case because we took an extra unnecessary
835 procedure, But I do not believe that we should be punished for taking an extra step when we
836 could be here as of right anyway. Notwithstanding that we made that appeal, we made that
837 original appeal and then came here we would still be here. If the board were to say it was not
838 timely we would go to the building department and file this application tomorrow. So I do not
839 know if anyone would win in that situation and be only a waste of time.

840
841 Attorney Silliman, I, by electing one option over the other you do not forfeit your rights you do
842 not give up one. I could not find a case on that. You first prong of your argument is quite
843 strong. The record shows a continued dialog with the town to progress this application. I think
844 you were working in good faith with the department of economic Development and Planning.
845 Obviously you have put in a lot of time and expense to get to where you are today. The legal
846 term is estoppel by our courts of conduct. The applicant either was told or led to believe that the
847 application was still pending while we were working with the otherwise why would staff still be
848 working with the applicant if the project was untimely.

849
850 Chairman Coffey, and it seems from the chronology that there was a lot of effort put into the
851 updating the application over the last two years or close to two years.

852
853 Attorney Silliman, And just note the type of studies that had, traffic studies are one thing but are
854 standard and the types of analysis that had to do here, they are standard but involved and take
855 time. From the record I would say they were working very cooperatively with the staff.

856
857 Chairman Coffey, Does anyone have any questions on the timeliness issue. Ok I know we have
858 a SEQRA issue but we have to deal with this issue first. My comments are that I agree with
859 Counsel's comments in which 274 allows them to go to us directly then they have the right to be
860 here. Also the applicant has been working continually over the past two years and I feel the
861 application is timely and we should not send them back to start the process over. Does anyone
862 else have any thoughts or comments? Can I have a motion to find the applicants application
863 timely so we can consider.

864
865 Mr. Umina, so moved.

866
867 Mr. Micelli, second.

868
869 Mr. Coffey all in favor? (all in favor) Apposed? (none) Ok so now you are timely so now we can

870 talk about our favorite subject SEQRA once again if you could address it.

871
872 Ms. Dougherty, That is great to hear because it is my favorite subject as well. I have never been
873 in a room where people admitted that. As I stated earlier my name is Jennifer Dougherty and I
874 represent ESCO Tower I am here tonight with Tom Butler and Jim Lauder here for ESCO
875 Tower located here in Delmar, and Mr. Chuck Preska, who is the property owner of the
876 proposed site. As the board knows we are here seeking area variances and I know this has been
877 discussed previously for setback and height. There is a maximum of 90 feet in height and we are
878 seeking a 120 foot tower with an AT&T and Verizon installment on it. As everyone knows
879 based on the the chronology that we just heard it has been a long and arduous trip to be here.
880 Notable land marks along the way were on June 17, 2009 there was a public hearing when the
881 timeliness issue was discussed and multiple other issues were discussed and there was a request
882 for additional information, additional RF analysis. And then there was a discussion of the ZBA
883 wanting to hire an RF consultant and I understand that Ron Graves was hired. We completed
884 additional studies, Ron Graves made comments, Rob Leslie submitted comments on February
885 17th on additional information that we had submitted in January, so that information is out there.
886 In addition to that in response to those February 17th letters we submitted this April 8th submittal
887 which includes an affidavit from an RF engineer that works for AT&T, Michael
888 Schwedatschenko, and includes additional information based on the comments from Ron Graves
889 relevant to the Verizon RF analysis radio frequency analysis. It is my understand that Mr.
890 Graves had a scheduling conflict and that he will be at a future meeting where we will discuss
891 those RF issues so lest I spoil my thunder and repeat myself I will skip over the RF and save that
892 for the future meeting. We are here tonight to discuss the two issues, timeliness which we have
893 gotten out of the way and SEQRA. And kudos to Mr. Moore who I believe is the Attorney who
894 left and spoke earlier about SEQRA and it was a great primer. SEQRA really is my favorite
895 subject n the world. And we are here tonight, we are seeking a review as an unlisted action and
896 a lot of my arguments are similar to the arguments that were discussed. Just as a refresher we
897 have our options. If we do a coordinated review where often you would ask the planning board
898 if they want to be lead agency or do you want us to be lead agency and then you make that
899 decision and then the lead agency takes over and does the review for everyone. We are of
900 course requesting an uncoordinated review as specified in our document and that is in part that
901 this has been a long and aqueous journey to get here. This application has been with the ZBA
902 and the Building Department for some time. This issue was discussed in June of 2009, if it was
903 going to be a coordinated review we were going to have to go through that process going off to
904 another board presenting the project and then come back to this board and present the project.
905 We just think that it is an unnecessary extra step and time issue at this point. And we understand
906 completely an uncoordinated review creates a little more work for us. We have to present our
907 SEQRA information to this board; this board makes its decision. It is not binding on the
908 planning board. We go to the planning board and they get the information and it is brand new to
909 them and we [present that to them. So in our opinion it is a win, win situation. Everyone gets
910 there environmental review, no one is prejudices by the uncoordinated review and it is perfectly
911 legal and permissible underneath SEQRA. That would be our preference to do that and there is
912 also the very practical aspect to that. This is not like a building where you need a use variance,
913 this is a telecommunications facility. The key issue is where is this tower going to stand? If this
914 board, and we have already moved the tower based on feedback from National Grid and
915 feedback from the County, if the tower is moved by any number of feet it changes the
916 environmental review, it changes the site plan and it changes the project whole heartedly. It is
917 not like you have a building with four corners and you are looking to build it. What you are
918 looking at with a telecommunications facility is that one very small spot where it sits. So we
919 would want to have the ZBA make their decision, do their SEQRA review decide and give us
920 some security as to where this tower will be located before we develop the site plan and go off to
921 the planning board for their review because it is crucial that we know and that the planning
922 board know what the ZBA's thought process is. And we are also on, and as we discussed this is
923 2 years down the road and this could have been a little different conversation. It could have
924 been discussed previously or decided on, but at this point we have some momentum we have the
925 new RF study, we have got Mr. Graves retained to do this. We want to keep moving this
926 forward and we think that the ZBA has significant information to do the environmental review,
927 to look at the photos to move forward with this application knowing that the planning board is

928 going to get their bite of the apple too. My notes are out of order because I really wanted to talk
929 about timeliness second. I wanted to thank Mr. Leslie for doing that time line. I know it was a
930 lot of work even to put the correspondence together. We appreciate that and we appreciate the
931 board handling that this evening. So what we are ultimately requesting is that the ZBA move to
932 continue with an uncoordinated review and move to continue the public hearing at the next
933 available opportunity. If the board has any questions we would be more than happy to answer
934 those. Also I noticed that after I sent these out if you look at the overlays which are underneath
935 tab C, the Verizon overlays. It is much easier to look at them if you have the base map to pull in
936 and out, underneath the overlays so I made some of these up, and I apologize.

937
938 Mr. DeCancio, C I do not think it is C.

939
940 Ms. Dougherty, There are two C's. I have exhibit C, and you see then you can slip this here and
941 look at it exactly. If you can't sleep at night you can study the RF analysis.

942
943 Ms Dougherty. So that completes my remarks and does anyone have any questions for anything
944 that they would like to know.

945
946 Mr. Micelli. I have a couple of questions for you. I know back in June we had discussed the
947 height and I think I don't know if you did a study or not the difference in the 120 foot tower and
948 the regulation 90 foot tower, there was not much difference in that if I remember correctly. We
949 also had the consultant here if you remember the gentleman that reviewed all the information
950 and that no matter where you go in town the bars really did not matter because you could still
951 pick up the reception on your phone. And I think your argument was that if you have one bar
952 you will not get reception anywhere in town and he said that you can so I was just a little
953 confused on that. If you remember, I do not know if you were here?

954
955 Ms. Dougherty, I was not here.

956
957 Mr. Micelli, so my concern is the height and what is the difference in the regulation 90 foot that
958 is allowed compared to the 120 foot proposed. So the consultant is saying one thing and your
959 staff is saying another thing.

960
961 Ms. Dougherty, The first issue that bar issue, I know there was a discussion at that meeting here
962 Mr. Graves talked about the signal strength and the bars and I believe ultimately what he stated
963 to you was that with an analog phone, remember where there used to be five bars?

964
965 Mr. Micelli, Right.

966
967 Ms. Dougherty, That it was significant of your signal strength. The new digital phones, once
968 you have a bar you have signal strength. But I do not believe that he went as far to say it does
969 not matter where you are in town you're going to have coverage. Because I think when you look
970 at the RF analysis that we included in here it shows that there are significant coverage gaps. On
971 the sheet that I just handed out, this is the base map for Verizon where we are showing white
972 that is below neg 85 in terms of signal strength. So your coverage is going to be diminished in
973 those places where it is white. Now if you put to the overlays it shows different coverage
974 scenarios underneath different towers and different scenarios. Let's take for example underneath
975 exhibit C, not letter C, exhibit C, if you overlay this, go to the maps, the very first one and you
976 put you base map underneath where white is where there is not sufficient coverage. Now this is
977 basically saying that if you put a tower or equipment on the Slingerlands site or on the water
978 tank that is where you coverage would be improved, you would have sufficient signal strength to
979 avoid dropped call and avoid interruption. Now this gets to your second question where the
980 tower and the height, you go to the last overlays before you get back to the base map. You are
981 looking at this one that shows the tower at 90 feet and one that shows the tower at 110. You
982 take this map and you put it underneath there and this shows you what you are going to get at 90
983 feet and you see if you look here this is 90 feet in brown and this is 110 so you can compare the
984 difference and you see these houses now covered in green get coverage. Their I Phones work
985 they are downloading data they are happy. Their neighbors over here if you went with this one

986 you will see that one street is going to get coverage and in e is not. So this speaks to the height
987 and why it is necessary. This does not adequately cover what our, what Verizon needs to cover
988 with this tower. And then you see you have your other towers and other coverage you are going
989 to have gaps. And the only way to address the gaps is to put in more equipment put in another
990 antenna put in another tower and that is what we want to avoid. We want to get in cover as
991 much as you can and then avoid the proliferation of towers.

992
993 Chairman Coffey, Can we get back to the SEQRA, I am sorry.

994
995 Ms. Dougherty, Sorry, it is my second favorite subject.

996
997 Chairman Coffey, That's ok, not a problem. So again what is, did you answer the question?

998
999 Ms. Dougherty, That goes to the height, and why we believe what we can justify the height
1000 based on the need. So those two things tie together.

1001
1002 Chairman Coffey, In terms of the benefit as you see it in uncoordinated review is it would get a
1003 final determination by the board and go on your merry way at least. Then you would still have
1004 to get to the substance of the variance before you can go to the planning board.

1005
1006 Ms. Dougherty, That is right, so we would come back SEQRA, SEQRA, resolution. And then
1007 move on, talk to Ron Grave's go through the RF analysis, make our case as we have in prior
1008 application but complete our final presentation on the variance application. Once we know the
1009 exact location of the tower, move over to the planning board knowing what the ZBA's thought
1010 process is.

1011
1012 Chairman Coffey, Does anyone have any other questions in regards to SEQRA?

1013
1014 Mr. Micelli, I have just one more question. When we went back, maybe you can answer this
1015 there was a group of residents that were against the tower. Was that you're your tower that they
1016 were arguing about? They were at the school. That was not you guys? Ok, ok.

1017
1018 Mr. Butler, That was not us.

1019
1020 Mr. Micelli, I just wanted to clear that up.

1021
1022 Mr. Watson, it was the middle school tower, no it was Hamagrael School tower.

1023
1024 Chairman Coffey, is there any other question for Ms. Dougherty in regards to SEQRA issues.

1025
1026 Mr. DeCancio, the one thing that I see as a difference here is it is going to cause an aesthetic
1027 change to the area. I know there are wires, power grid wires going through it but an actual cell
1028 tower I feel will change the character a little bit of the community so I think that there may be a
1029 bigger environmental impact here. It is more than just, you made an example of a building. I
1030 feel like a cell tower is a big difference. Put aside health and safety concerns you are changing
1031 this area which is a farm by putting up a big cell tower.

1032
1033 Chairman Coffey, Do you have any questions otherwise I am going to ask Keith to weigh in.
1034 Are there any other questions from the board? Keith. do you want to respond to anything the
1035 applicant said.

1036
1037 Attorney Silliman, Yes I just want to talk a little bit about SEQRA. You guys are getting quite
1038 the education about SEQRA and coordinated review.

1039
1040 Mr. Micelli, it was just last week that we went to that school.

1041
1042 Attorney Silliman. I just want to say something about coordinated review because you guys are
1043 down in the grass and not seeing the forest. The forest is coordinated review is assigned when

1044 you have like DEC having to talking to DOT who is talking to another entity over here. It is
1045 very rare when you get into a situation where you have two boards coordinating that are part of
1046 the same town. That adds a different layer of complexity to the concept of coordinated review
1047 because we also have to look at it from the perspective of consistency from the town and more
1048 importantly efficiency within the Town. Now this project is a little bit different from the last
1049 project which you had. If you think about it, who is here talking to you, but the town planner a
1050 TDE and the same people that will be advising the planning board. My recommendation would
1051 be to you and you may find this as a surprise is you opt for a coordinated review. Talk to the
1052 planning board and see if the planning board would want to take lead agency role for the review
1053 and then have a consistent SEQRA review on behalf of the town going forward. That would be
1054 my recommendation to you. I am not going to get into a lot of the background because you
1055 heard from Mike and the background here. I am sorry; your first name is Jennifer? What
1056 Jennifer said and I agree with, Rob Leslie has put a lot of work in on this project and that work
1057 should benefit both Boards. In the interest of consistency and efficiency I think that this case
1058 can be distinguished from the last to be just as, and begs for a coordinated review. I am pretty
1059 sure wearing my other hat that the planning board would assert leading agency status for the
1060 SEQRA review dealing with the issues that you just raised, aesthetics, health and safety so that
1061 would be my recommendation. But other than that I do not argue with anything that Jennifer
1062 said.

1063
1064 Chairman Coffey, Any other questions for Counsel or Miss Dougherty on SEQRA

1065
1066 Ms. Dougherty, No, but we do respectfully disagree and would appreciate this board moving this
1067 application along. As you know it has been a two year process and we really think that we need
1068 the security and certainty of the location of the tower before moving to the planning board. And
1069 with all due respect to Mr. Graves the consultant, the planning board will certainly have his
1070 benefit and it is the applicant that pays those fees. So either way it is the same result, only this
1071 will move it along much more expeditiously.

1072
1073 Chairman Coffey, I understand the need to move it along but as I understand the chronology not
1074 much has happened since February, is that fair?

1075
1076 Ms. Dougherty. Since ...

1077
1078 Chairman Coffey, February 16th.

1079
1080 Ms Dougherty, of this year?

1081
1082 Chairman Coffey, Yes.

1083
1084 Ms. Dougherty, when we submitted the additional information?

1085
1086 Chairman Coffey, Yes.

1087
1088 Ms. Dougherty, we received the letters we responded with studies, the RF analysis getting the
1089 engineers to come together to look at the specific requirements. We were working behind the
1090 scenes very diligently to get that information in. I was re, not that the board is particularly
1091 interest in this but I was retained right at just about that point so and I hit the ground running and
1092 got here pretty quick.

1093
1094 Chairman Coffey, Ok are there any other comments otherwise I will weigh in. I have made my
1095 thoughts known previously about coordinated review and why I do think it is a good idea. I do
1096 agree with Keith like I did with Mike earlier that when you are dealing with something like
1097 SEQRA and a project such as this it would be wise to do a coordinated review and just have one
1098 agency weigh in on the environmental impacts of the project. And I would recommend a letter
1099 be sent to the planning board asking them to be lead agency on a coordinated review.

1100
1101 Mr. Leslie, Can I say something?

1102
1103 Chairman Coffey, sure.
1104
1105 Mr. Leslie, Just looking at their response letter and material dated April 8 they do ask for a
1106 SEQRA review for a tower based on a height of 150. If you recall the tower height of 120 is
1107 what they are proposing for coverage at this time but it's buildable to 150. So they are asking
1108 for a SEQRA review of 150 so I guess the question is are they still looking for the 150 height so
1109 that if coordinated review is done that whether it is the zoning board or the planning board, looks
1110 at the visual impacts of 150 as opposed to 120.
1111
1112 Chairman Coffey, address that Ms. Dougherty.
1113
1114 Ms. Dougherty, yes, it is a segmentation issue that was previously discussed in the June meeting.
1115 We are seeking for a SEQRA review of the height at 150 and the reason is for that is for
1116 efficiency. This would be, we would be done with the environmental review. If there are
1117 additional carriers that could come on and collocate of course that is much better than building a
1118 new tower. It would proceed to the ZBA get a review for their variances and then proceed to the
1119 planning board for their special use permit. But the SEQRA review would have already been
1120 considered. That is....
1121
1122 Chairman Coffey, SAEQRA Buildable to 150?
1123
1124 M. Dougherty, SEQRA Buildable to 150.
1125
1126 Attorney Coffey, Do a conservative worst case analysis, it makes sense.
1127
1128 Mr. Platel, the original variance is for 120 or 110.
1129
1130 Mr. Leslie, the variance is for 120.
1131
1132 Mr. Platel, 120.
1133
1134 Mr. DeCancio, so should they want to go up to 150 they would seek another variance?
1135
1136 Mr. Platel, Correct.
1137
1138 Attorney Silliman, Yes, but they would not have to go through SEQRA again.
1139
1140 Mr. DeCancio, they would not.
1141
1142 Attorney Silliman, No.
1143
1144 Chairman Coffey, so you want the SEQRA review on the 150?
1145
1146 Ms. Dougherty. The reason is that if we could show a carrier that needed 150 we would do that
1147 right now. We do not have that carrier so we need that in order to show your need for your area
1148 variance application so we are not seeking it at this time. We have justification for the 120 but
1149 SEQRA review is a separate issue.
1150
1151 Chairman Coffey, Do any other member want to comment on the SEQRA issue?
1152
1153 Mr. DeCancio, I would like to comment on this SEQRA. I hate to say it again but I disagree
1154 with the Chairman and think this project is significantly different than the last. I think you have
1155 to base things on, take them up as they come one by one. I believe that this is a cell tower, there
1156 are I believe many people say and many groups and organizations are saying there is a major
1157 environmental impact. Whether it be aesthetics, health or whatever it may be. I feel that a
1158 coordinated review on this project makes more sense because this is really; I agree the town
1159 needs to come up with a plan on how we are going to deal with cell towers. Obviously there are

1160 other applications before the town so I think on this project, yeah I support a coordinated review.
1161
1162 Mr. Umina, Didn't the Chairman support a coordinated review too?
1163
1164 Chairman Coffey, I did, right.
1165
1166 Mr. Umina, so you were not disagreeing with the Chairman.
1167
1168 Mr. DeCancio. It was on the last project I disagree.
1169
1170 Chairman Coffey, He sees a distinction from the prior project where I do not.
1171
1172 Mr. Umina, but on this subject you are supporting the Chairman
1173
1174 Mr. DeCancio, I support a coordinated review.
1175
1176 Chairman Coffey, he supports a coordinated review.
1177
1178 Mr. Umina, I was confused.
1179
1180 Mr. DeCancio, Sorry, this is my second language.
1181
1182 Chairman Coffey, does anyone else want to be heard on the issue.
1183
1184 Mr. Watson, I agree there are different factors and considerations that we are weighing on this
1185 case so I actually agree with our counsel this time around that we should do a coordinated
1186 review and ask the planning board to be lead agency.
1187
1188 Mr. Micelli, I agree too.
1189
1190 Mr. Umina, I agree.
1191
1192 Chairman Coffey, do you want us to do 2 motions, coordinated review and lead agency?
1193
1194 Mr. Silliman, no, just do a motion for a coordinated review and request that the planning board
1195 take on lead agency.
1196
1197 Chairman Coffey, so can we have a motion as counsel indicated for a coordinate review and a
1198 request for the planning board to take lead agency.
1199
1200 Mr. DeCancio, so moved.
1201
1202 Chairman Coffey, DeCancio, Second?
1203
1204 Mr. Micelli, I'll second that.
1205
1206 Chairman Coffey, Lennie, All in favor?
1207
1208 All members, Aye
1209
1210 Opposed, silence
1211
1212 Chairman Coffey, so that is it. We do have a draft letter I think Mr. Leslie helped draft it up and
1213 a draft resolution as well.
1214
1215 Mr. Leslie, yes, we classified the action as an unlisted action.
1216
1217 Attorney Silliman, can I have one?

1218
1219 Chairman Coffey, Do you have them?
1220

1221 Mr. Silliman, can I have one minute to read them? Once again I...
1222

1223 Chairman Coffey, he stepped in at the last minute so if you can work with Keith he will get what
1224 needs to be done and signed. I think you actually sign the letter.
1225 -----
1226

1227
1228 Mr. Umina started the discussion and stated that he believed that it was no fault of the Konicek's
1229 and the errors were made by others not in their control. I believe that they are in need of peace
1230 of mind and believe it should be approved.
1231

1232 Chairman Coffey, I can agree with Ken but you could say that it was a self created hardship but
1233 the alternative would be to make them tear it down over 1.2' is ridiculous. Also taking into
1234 account that the land behind the lot was donated to the Audubon Society by her family and if
1235 they did not donate that land they would not be here at all. Are there any other comments from
1236 the board?
1237

1238 With no other comments the Chairman asked for a motion which was made by Ken Umina and
1239 was seconded by Dave DeCancio, with a 5-0 vote all in favor.
1240

1241 -----
1242
1243 Ken Umina, started this discussion stating that this is for a 6 foot fence and it is in the front yard
1244 but really it is not, it is setback and is actually behind someone else's property. And I did see
1245 that the shrubs are coming down and I would be in favor of the application.
1246

1247 Mr. DeCancio stated he visited the site also and that the fence is in the front yard by definition
1248 but is really located more in the side yard and he would not have a problem with the fence. He
1249 also pointed out that no one spoke in opposition to the fence and that the one neighbor directly
1250 affected told the applicant that she was in favor of the fence.
1251

1252 Mr. Micelli said that he would also be in favor of the fence.
1253

1254 Chairman Coffey asked for a Motion which was made by Ken Umina and seconded by Lennie
1255 Micelli. With a 5-0 vote in favor the variance application was approved.
1256
1257 -----
1258

1259 The board was going to adjourn but Ron Levesque with the sign studio showed up to give more
1260 information that the board had asked for. Mr. Levesque, I guess that the board had issues and I
1261 am here to address them in regards to the type, size of the sign. We spoke to Mr. Platel and he
1262 said to make sure we were here. Basically the legal ramifications for the Jiffy lube and
1263 Hoffman's are is that Hoffman's is the franchisee for Jiffy Lube in this area from Kingston the
1264 Queensbury. Years ago when Jiffy lube was a franchiser and was handing out franchises they
1265 did it easily because of hard times, they were facing bankruptcy. A lot of these franchises like
1266 Hoffman's were allowed to do as they pleased and co-mingled the 2 identities. Now they are 2

1267 legal identities and should not have been co-mingled. Things changed for Jiffy Lube and they
1268 are now financially sound and want to get the identity back. Prior to April 2008 they started
1269 contacting the franchises to get the logos off of the other signs so they can stand alone and
1270 refresh their logo with new color schemes, earthy color tones. When Hoffman's found out that
1271 Jiffy lube wanted to change and Hoffman's decided to do the same. Now that the identities are
1272 separated they want to stand on their own.

1273
1274 We came into play with them when they asked us to find out what they could do in all of the
1275 municipalities in which they were located. We did look at the Bethlehem site because it has been
1276 pretty much Hoffman's identity for years. But it is the roof structure which they did not want to
1277 get rid of. We came up with the new sign that is an internally illuminated box sign that is a 6
1278 foot in height off the ground. This is to retain the landscaping under the sign that Hoffman's
1279 does that other people are hoping they could achieve. They were asked by other municipalities
1280 to do monument sign but had been allowed to raise it because the other municipalities did not
1281 want to lose the landscaping package that they do at the base of the sign.

1282
1283 The board brought up that the actual sign was going to be wider than the existing sign and that
1284 was agreed on after a short discussion. Mr. DeCancio said that he did not have big concerns
1285 about the height but that the big issue was the internal illumination of the sign. Mr. LeVesque
1286 stated that the internally illuminate signs or a cleaner sign as far as lighting goes. You do not get
1287 hot and cold spots with the internally lit signs like you do with the exterior lights.

1288
1289 Mr. Micelli asked about why you could not do a monument sign like the CVS. He responded for
1290 the most part that CVS does not have an identity program. That sign for CVS was custom made
1291 for that location. The signs on the wall are not, they can be internally illuminated in the future.
1292 The McDonalds sign is an internally illuminated sign but it is not illuminated that way as are the
1293 CVS wall signs. Mr. Micelli asked if they could do the same sign and illuminate it from the
1294 exterior. Mr. LeVesque said yes but it would have the hot and cold spots and it would look like
1295 there are lights blown out in the sign. It would not look as nice as an internally lighted,
1296 uniformly lit sign.

1297
1298 Chairman Coffey and Mr. DeCancio asked about the sign program, sign policy that the applicant
1299 was supposed to supply to the board. Mr. Levesque said he does have the info and that they only
1300 have a choice of the signs that are in the program which only allows them to have internally
1301 lighted signs. Anything other than what is offered would be a custom made sign. Hoffman's is
1302 allowed to have both identities on one sign where normally they, Jiffy Lube may ask for
1303 individual signs for each use. They are going to change the sign to earth colors and tone it down
1304 and also keep the roof system. Chairman Coffey and Mr. DeCancio asked for verification that
1305 Jiffy Lube is making Hoffman's change the signs which was provided by Mr. Levesque. Yes,
1306 that is the signage package we just went over and starting in April 2008 and all the franchises
1307 were given 3 years to change over to the new branding so that they are uniform. Hoffman's is
1308 being pressured by Jiffy Lube to get the signage changed by the end of the year. They want the
1309 signs to be consistent with the Jiffy Lube branding. Mr. Micelli asked if any were done in the
1310 area and the answer was that there is one in Latham that is done. This is not just for the area it is
1311 for all Jiffy Lubes. Mr. Umina asked if they would consider exterior illumination and the answer
1312 was yes but they would request that they give the sign that is requested and do upward lighting.

1313 Chairman Coffey noted that the Valero had goose neck lighting and Mr. LeVesque stated that it
1314 could not be done that way because of the roof and that with Hoffman's landscaping they prefer
1315 ground lights. Mr. Umina asked if it would it be a problem to do the up lighting and Mr.
1316 Levesque said yes because of the landscaping and also that they want to keep this as close as
1317 possible to the existing sign.
1318

1319 The meeting was closed on a motion from Mr. Watson and Seconded by Mr. Micelli with all in
1320 favor at 9:05 pm.

1321

1322

1323

1324

Respectfully submitted.

Mark J. Platel